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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

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JAMES TYGART [redacted] APPELLANT

vs.

STATE OF ARKANSAS ..... APPELLEE

JURISDICTIONAL STATEMENT
AND
APPENDED OPINION AND AFFIRMANCE

APPEAL FROM ARKANSAS SUPREME COURT

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and
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209 West Elm Street
Rogers, Arkansas 72756

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JAMES TYGART ..... APPELLANT

vs.

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JURISDICTIONAL STATEMENT

A. The case of James Tygart, appellant, v. State of Arkansas, No. 5456, is unreported except in the advance sheets for February 23, 1970, of the Supreme Court opinions. It will be reported as Tygart v. State, 248 Ark. 125, 451 S.W. 2d 255.

B. The appellant invokes the jurisdiction of the Supreme Court of the United States on the grounds that the proceeding in this case is in violation of Amendment 4 to the Constitution of the United States and Amendment 14 to the Constitution of the United States.

(1) This proceeding involves the question of unlawful searches and seizures in violation of Amendment 4 to the Constitution of the United States and is

brought under Title 28, Section 1257, United States Code Annotated.

(2) The opinion was delivered by the Arkansas Supreme Court on February 23, 1970, and upon petition for rehearing (R 73) said petition was denied on the 30th day of March, 1970, on which date the judgment of the Supreme Court of Arkansas became final. Notice of appeal was filed on May 28, 1970, in the Supreme Court of Arkansas.

(3) It is submitted that Title 28, Section 1257, United States Code Annotated is believed to confer on this court jurisdiction of the appeal.

(4) It is believed that **Wong Sun v. United States, 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. (2) 441, Mapp v. Ohio, 376 U. S. 643, 81 S. Ct. 1684, 6 L. Ed. (2) 1081, Siborn v. New York, 392 U.S. 40, 88 S. Ct. 1889, 20 L. Ed. (2) 917,** and **Carroll v. U. S., 267 U.S. 132,** sustained the jurisdiction.

C. The questions presented are:

(1) Whether Amendment 4 to the Constitution of the United States requires the issuance of a search warrant to be based upon a written affidavit under oath or affirmation. In this case the search warrant was not based upon a written affidavit and no affidavit was filed prior to the issuance of the search warrant.

(2) The question is whether or not the search of the automobile of the appellant without arrest and prior to arrest and without a search warrant was a lawful search and seizure under **Siborn v. New York, 392 U.S. 40, 88 S. Ct. 1889, 20 L. Ed. (2) 917,** said search being used as a justification for an arrest.

D. The Arkansas officers had information that the appellant would be returning from Mexico with a

quantity of illegal drugs and that he would be driving a 1970 red and white Rambler.

(1) The officers arranged a stake-out or road block on the highway over which this car would travel. The officers had no search warrant. They stopped the car, asked for the appellant's driver's license, had him get out of the car and then, without placing him under arrest for any violation, proceeded to search the car. The officers discovered a quantity of drugs in their search and after the search, placed the appellant under arrest.

(2) The next day the officers procured a search warrant without filing an affidavit for a search warrant and proceeded to search the car a second time. Another quantity of drugs were found in this search. These questions were presented to the trial court during the trial by virtue of motions to suppress and presented to the Supreme Court of Arkansas in the appeal to the Supreme Court of Arkansas. These questions of violation of Amendment 4 to the Constitution of the United States and Amendment 14 to the Constitution of the United States were overruled by the Supreme Court of Arkansas. The refusal to suppress the evidence thus obtained was overruled by the trial court and the Supreme Court of Arkansas. The questions were raised in the trial court during the trial and in the Supreme Court of Arkansas (R 24, 47, 74, 75, 76, 77, 78, 79, 80), and in the motion for new trial (R 7-9). All of these contentions were overruled by the trial court and the Supreme Court. The contentions were made in both courts that the proceeding in this cause was in violation of Amendment 4 to the Constitution of the United States as applied to the states by Amendment 14 to the Constitution of the United States.

E. In view of the holdings in **Siborn v. New**

York, 392 U.S. 40, 88 S. Ct. 1889, 20 L. Ed. (2) 917, and **Wong Sun v. U.S., 371 U. S. 471, 83 S. Ct. 407, 9 L. Ed. (2) 441,** in which it is held that the success of a search will not validate it and that searches preceding the arrest and used as justification for arrest cannot stand, it is contended that search without the search warrant presents a substantial federal question. It is the contention of the appellant:

(1) That the original search was used as a justification for the arrest. That it was reasonably practicable for the officers to have obtained a search warrant under **Carroll v. U.S., 367 U.S. 132.**

(2) It is the contention of the appellant that Amendment 4 to the Constitution of the United States requires a written affidavit upon which to base the issuance of a search warrant. It is submitted that research has not revealed any decisions of the United States Supreme Court on this question. It is therefore submitted that a substantial federal question is involved, for the just administration of the criminal law and in view of the fact that the United States Supreme Court has not heretofore passed on this question.

I. The opinion of the Supreme Court of Arkansas is appended hereto, which contains the judgment of affirmance of this cause, which became final on March 30, 1970, upon denying the motion for rehearing.

Respectfully submitted,

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Attorneys for Appellant

IN THE CIRCUIT COURT OF
WASHINGTON COUNTY, ARKANSAS

THE STATE OF ARKANSAS ..... PLAINTIFF
VS. No. 4629
JAMES TYGART ..... DEFENDANT

ORDER

Now on this 12th day of August, 1969, comes on for trial the defendant, James Tygart, on the charge of illegal possession of depressant or stimulant drugs on or about the 22nd day of May, 1969, and the defendant appearing in person and by his attorney, Jeff Duty, and the State appearing by Mahlon G. Gibson, prosecuting attorney, and James O. Burnett, deputy prosecuting attorney, and both sides having announced ready for trial, a jury of twelve of the regular April, 1969 panel of petit jurors was selected and sworn, and after hearing the evidence, instructions of the Court, and argument of counsel, retired, and after deliberation, returned the following verdict into court:

> "We, the jury, find defendant, James Tygart, guilty of possession of illegal depressant or stimulant drugs without a valid prescription and fix his punishment at two years in the state penitentiary and a fine of $2000.00 (Prison—not to exceed 2 years.).
>
> /s/ Gene B. Jordan
> Foreman,

which verdict the Court accepted, and sets August 18th, 1969 as the date for pronouncement of sentence.

IT IS, THEREFORE, ORDERED AND AD-